

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MATTHEW GIBSON,

Plaintiff,

v.

**CIVIL ACTION NO.: 5:21-cv-00181
HONORABLE FRANK W. VOLK**

**LOUISE E. GOLDSTON, individually,
COUNTY COMISSION OF RALEIGH
COUNTY, a political subdivision,
JEFF MCPEAKE, individually,
BRIAN WHITE, individually,
BOBBY STUMP, individually,
KYLE LUSK, individually,**

Defendants.

**DEFENDANTS' RALEIGH COUNTY COMMISSION, JEFF MCPEAKE, BRIAN
WHITE AND BOBBY STUMP'S MOTION IN LIMINE TO EXCLUDE LAY OPINION
TESTIMONY**

NOW COMES Defendants, Raleigh County Commission, Jeff McPeake, Brian White and Bobby Stump, by counsel, J. Victor Flanagan, Kevin J. Robinson, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and moves this Court, *in limine*, to exclude, bar and/or otherwise prohibit the parties, their witnesses and/or counsel from arguing, testifying or otherwise introducing into evidence lay opinion testimony from any fact witness.

Federal Rule of Evidence 701 explicitly lists the topics upon which lay witnesses may render an opinion. Under the rule, lay witnesses are not allowed to render opinion testimony “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. Rule. 701(c). During the discovery portion of this case, it appeared to the Defendants that the Plaintiff or Plaintiff’s witnesses may attempt to render opinion testimony regarding medical or other scientific

determinations during trial. Any such testimony should be barred under Fed. Rule. 701.

WHEREFORE, this Defendants request that the Court grant Defendants *Motion in Limine* to exclude lay opinion testimony.

**COUNTY COMMISSION OF RALEIGH
COUNTY, JEFF McPEAKE, BRIAN
WHITE AND BOBBY STUMP**

By Counsel,

/s/ Kevin J. Robinson

J. Victor Flanagan, WV State Bar No. 5254
Kevin J. Robinson, WV State Bar No. 10181

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
252 George Street
Beckley, WV 25801
Telephone: (304) 254-9300
Facsimile: (304) 255-5519

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

MATTHEW GIBSON,

Plaintiff,

v.

**CIVIL ACTION NO.: 5:21-cv-00181
HONORABLE FRANK W. VOLK**

**LOUISE E. GOLDSTON, individually,
COUNTY COMISSION OF RALEIGH
COUNTY, a political subdivision,
JEFF MCPEAKE, individually,
BRIAN WHITE, individually,
BOBBY STUMP, individually,
KYLE LUSK, individually,**

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 6th day of June, 2022, that a true copy of the foregoing "**DEFENDANTS' RALEIGH COUNTY COMMISSION, JEFF MCPEAKE, BRIAN WHITE, AND BOBBY STUMP'S MOTION IN LIMINE TO EXCLUDE LAY OPINION TESTIMONY**" was served upon opposing counsel through the Court's CM/ECF filing System and e-mail as follows:

John H. Bryan, Esquire
Law Office of John H. Bryan
611 Main St.
P.O. Box 366
Union, WV 24983
jhb@johnbryanlaw.com
Counsel for Plaintiff

Jennifer E. Tully, Esquire
Adam K. Strider, Esquire
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
P. O. Box 3710
Charleston, WV 25337-3710
jtully@baileywvant.com
astrider@baileywvant.com

Counsel for Defendant Louise E. Goldston

/s/ Kevin J. Robinson

J. Victor Flanagan, WV State Bar No. 5254
Kevin J. Robinson, WV State Bar No. 10181